Appendix D- Hunts Point Critical Areas Regulations in Shoreline Jurisdiction

Contents

1. General Regulations

A. The Shoreline Master Program, and not this appendix to the Shoreline Master Program, exclusively governs uses and modifications in Lake Washington and establishes a Lake Washington setback with corresponding regulations. These Appendix D regulations apply to all other critical areas within shoreline jurisdiction, including those that may be found within a Lake Washington setback. The Town of Hunts Point only contains Wetlands and Fish & Wildlife Habitat Conservation Areas within its shoreline jurisdiction and does not contain any known geologically hazardous areas or critical aquifer recharge areas.

B. Purpose

1. The purpose of these critical areas regulations is to designate and classify ecologically sensitive and hazardous areas within shoreline jurisdiction and to protect these areas and their functions and values, while also allowing for reasonable use of private property.

2. The Town finds that critical areas provide a variety of valuable and beneficial biological and physical functions that include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, protection from hazards, historical and archaeological and aesthetic value protection, and recreation.

3. Goals. By limiting development and alteration of critical areas, these regulations seek to:

   a. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to erosion, seismic events, or flooding;

   b. Protect unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats.

c. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands and habitat conservation areas.

4. These regulations are to be administered with flexibility and attention to site-specific characteristics. It is not the intent of these regulations to make a parcel of property unusable by denying its owner reasonable economic use of the property.

C. Relationship to other regulations

1. These critical area regulations shall apply as an overlay and in addition to this Shoreline Master Program, zoning and other regulations adopted by the Town.

2. These critical area regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as adopted by the Town. When any provision of this Title or any existing regulation, easement, covenant, or deed restriction, conflicts with this Title, that which provides more protection to the critical areas shall apply.

3. Any individual critical area adjoined by another type of critical area shall meet the requirements of the most restrictive buffer.

D. Administrative procedures. The administrative procedures followed during the critical area review process shall conform to the standards and requirements of this Shoreline Master Program and Hunts Point Municipal Code. This shall include, but not be limited to, timing, appeals, and fees associated with applications covered by these regulations.

E. Fees.

1. The Town by resolution shall establish fees for critical area review processing, and other services provided by the Town as required by these regulations.

2. Unless otherwise indicated in these regulations, the applicant shall be responsible for the initiation, preparation, submission, and expense of all required reports, assessment(s), studies, plans, reconnaissance(s), peer review(s) by qualified consultants, and other work prepared in support of or necessary to review the application.

F. Appeals. Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of these regulations may be appealed according to, and as part of, the appeal procedure for the shoreline permit or approval.

G. Applicability. The provisions of these regulations shall apply to all lands, all land uses and development activity, and all structures and facilities in the Town's shoreline jurisdiction, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the shoreline jurisdiction of the Town. No

person, company, agency, or applicant shall alter a critical area or buffer within shoreline jurisdiction except as consistent with the purposes and requirements of this SMP.

H. Critical area reports – Requirements

1. Prepared by qualified professional. If required by any part of these critical areas regulations, the applicant shall submit a critical area report prepared by a qualified professional as defined herein. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.

2. Incorporating science. The critical area report shall use the most current, accurate, and complete scientific and technical information available in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Title.

3. Minimum report contents. At a minimum, the report shall contain the following:

a. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested.

b. A written assessment and accompanying maps of the critical areas and buffers of the project area, including the following information at a minimum:

i. Identification and characterization of existing critical areas and required buffers

ii. Description of the development proposal with dimensions, including limits of areas to be cleared;

iii. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.

iv. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development.

v. An analysis of site development alternatives.

vi. A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas.

vii. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Mitigation Plan Requirements, including, but not limited to:

viii. The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

ix. The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment.

x. A discussion of the performance standards applicable to the critical area and proposed activity.

c. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.

d. A statement specifying the accuracy of the report, and all assumptions made and relied upon.

e. Financial guarantees to ensure compliance.

f. Any additional information required for the critical area as specified in the corresponding chapter.

g. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Shoreline Administrator.

I. Critical area report – modifications to requirements

1. Limitations to study area. The Shoreline Administrator may limit the required geographic area of the critical area report as appropriate if:

a. The applicant, with assistance from the Town, cannot obtain permission to access properties adjacent to the project area; or

b. The proposed activity will affect only a limited part of the subject site.

2. Modifications to required contents. The applicant may consult with the Shoreline Administrator prior to or during preparation of the critical area report to obtain Town approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

3. Additional information may be required. The Shoreline Administrator may require additional information to be included in the critical area report when determined to be necessary to the review of the proposed activity. Additional information that may be required, includes, but is not limited to:

a. Historical data, including original and subsequent mapping, aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site.

b. Grading and drainage plans.

c. Information specific to the type, location, and nature of the critical area.

J. Mitigation requirements

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this Title, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated in accordance with an approved critical area report and SEPA documents.

2. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area. Off-site mitigation shall be allowed in an agency-approved wetland bank within the same watershed or agency-approved in-lieu fee sites within the same watershed.

3. Mitigation shall not be implemented until after Town and agency, if applicable, approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

K. Mitigation sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

3. Rectifying the impact to wetlands and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

6. Compensating for the impact to wetlands and habitat conservation areas by replacing, enhancing, or providing substitute resources; and

7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

L. Mitigation plan requirements. When mitigation is required, the applicant shall submit for approval by the Town a mitigation plan as part of the critical area report. The mitigation plan shall include the following:

1. Environmental goals and objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed, including:

2. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area.

3. A review of the most current, accurate, and complete scientific and technical information available supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed.

4. An analysis of the likelihood of success of the compensation project.

5. Performance standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of these critical areas regulations have been met.

6. Mitigation shall achieve equivalent or greater biological functions. Mitigation of alterations to critical areas shall achieve equivalent or greater biological functions and shall include mitigation for project-related adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

7. Detailed construction plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

8. The proposed construction sequence, timing, and duration.

9. Grading and excavation details.

10. Erosion and sediment control features.

11. A planting plan specifying plant species, quantities, locations, size, spacing, and density.

12. Measures to protect and maintain plants until established.

13. Detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

14. Monitoring program. The mitigation plan shall include a program for monitoring construction of the compensation project, and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed, but not necessarily annually, to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years. The monitoring of mitigation that includes planting of shrubs and trees shall be for a period of not less than ten (10) years.

15. Contingency plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

M. Unauthorized critical area alterations and enforcement

1. When a critical area or its buffer has been altered in violation of the provisions of this SMP, all ongoing development work shall stop and the critical area shall be restored. The Town shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this Title. If the violator fails to perform or pay as required in this Section, and the violator is not the owner or responsible party, the Shoreline Administrator may seek compliance or payment from the owner or responsible party.

2. Restoration plan required. All development work shall remain stopped until a restoration plan is prepared by the applicant and approved by Town. Such a plan shall be prepared by a qualified professional and shall describe how the actions proposed meet the minimum requirements described in Subsection 3 below. The Shoreline Administrator shall, at the violator’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

3. Minimum performance standards for restoration.

a. For alterations to wetlands, streams and habitat conservation areas the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

i. The pre-disturbance structural and functional values shall be restored, including water quality and habitat functions;

ii. The historic soil types and configuration shall be replicated;

iii. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities; and

iv. The historic functions and values should be replicated at the location of the alteration.

b. For alterations to geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

i. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;

ii. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

iii. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

4. Site investigations. The Shoreline Administrator is authorized to make site inspections and take such actions as are necessary to enforce these critical areas regulations. The Shoreline Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

5. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of these critical areas regulations shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of these critical areas regulations is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of these critical areas regulations shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The Town may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of these critical areas regulations.

N. Subdivisions. The subdivision and short subdivision of land in a critical area and associated buffers is subject to the following:

1. Land that is located wholly within a critical area or its buffer may not be subdivided.

2. Land that is located partially within a critical area or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

   a. Located outside of the critical area and its buffer; and

   b. Meets the minimum lot size requirements of the Town's zoning regulations.

O. Critical area markers and signs. The boundary at the outer edge of the critical area or buffer shall be identified with temporary signs prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.

P. Notice on title

1. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is submitted shall file a notice with the county records and elections division according to the direction of the Town. The notice shall state the presence of the critical area or buffer on the property, of the application of these critical areas regulations to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land.

2. This notice on title shall not be required for a development proposal by a public agency, public or private utility, within a right-of-way, or on the site of a permanent public facility.

3. The applicant shall submit proof that the notice has been filed for public record before the Town approves any development proposal for the property or, in the case of subdivisions, short subdivisions, planned unit developments, and binding site plans, at or before recording.

Q. Critical area inspections. Reasonable access to the site shall be provided to the Town, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

2. Wetlands

A. Designating wetlands. Identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. Any areas within the Town meeting the wetland

designation criteria in that procedure are hereby designated critical areas and are subject to these provisions.

B. Wetland ratings. Wetlands shall be rated according to the Department of Ecology wetland rating system found in the *Washington State Wetland Rating System for Western Washington* (Ecology Publication #04-06-025) or as revised by Ecology. These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland rating categories

a. Category I. Category I wetlands are:

i. Wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as high-quality wetlands.

ii. Bogs.

iii. Mature and old-growth forested wetlands larger than 1 acre.

iv. Wetlands that perform many functions well (scoring 70 points or more).

These wetlands: (1) represent unique or rare wetlands; (2) are more sensitive to disturbance than most wetlands; (3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; (4) provide a high level of functions.

b. Category II. Category II wetlands are Wetlands with a moderately high level of functions (scoring between 51 and 69 points).

c. Category III. Category III wetlands are wetlands with a moderate level of functions (scoring between 30 and 50 points). Wetlands scoring between 30 and 50 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape that Category II wetlands.

d. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 30 points) and are often heavily disturbed. These are wetlands that are capable of being replaced, or in some cases improved. These wetlands may provide some important functions, and should be protected to some degree.

C. Activities allowed in wetlands. The activities listed below are allowed in wetlands and do not require submission of a critical area report, except where such activities result in a loss to the functions and values of a wetland or wetland buffer. These activities include:

1. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.

2. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources.

3. Educational and scientific research activities.

4. Mechanical control and removal of noxious or invasive species.

D. Critical area report – Additional requirements for wetlands. In addition to the general critical area report requirements of Section 1.H and 1.I, critical area reports for wetlands must include the following at a minimum:

1. Wetland delineation and required buffers;

2. Existing wetland acreage;

3. Wetland category; vegetative, faunal, and hydrologic characteristics;

4. Soil and substrate conditions;

5. Topographic elevations, at two-foot contours;

6. Existing and proposed adjacent site conditions; and

7. Property ownership.

E. Performance standards – General requirements

1. Alterations may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not result in net loss of critical areas or shoreline ecological functions and is necessary to accommodate preferred uses when consistent with the Shoreline Management Act and this Shoreline Master Program.

2. Alterations and uses shall be prohibited from wetlands and wetland buffers, except as provided for in these critical areas regulations.

3. Category I wetlands. Alterations and uses shall be prohibited from Category I wetlands, except for low-impact public access and recreation facilities, such as raised boardwalks or platforms for hiking or bird/wildlife watching, that provide opportunities for significant numbers of people to enjoy the natural environment. Such facilities shall be designed to avoid or minimize significant vegetation

removal. Projects shall be designed to result in no net loss of ecological functions, and all adverse impacts shall be mitigated.

4. Category II and III wetlands. The following alterations are allowed in Category II and III wetlands and their associated buffers:

   a. Water-dependent alterations as provided for under the Town's Shoreline Master Program may be allowed where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffer and other critical areas.

   b. Low-impact public access and recreation facilities, such as raised boardwalks, may be allowed if they provide opportunities for substantial numbers of the general public to enjoy the natural environment. Such facilities shall be designed to avoid or minimize significant vegetation removal. Projects shall be designed to result in no net loss of ecological functions, and all adverse impacts shall be mitigated. Public access and recreational facilities shall incorporate interpretive signs or other mechanism to educate the public about wetland functions.

   c. Where alterations are proposed that are neither water-dependent nor related to public access and recreation, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:

      i. The basic project purpose cannot reasonably be accomplished and successfully avoid, or result in less adverse impact on, a wetland on another site or sites in the general region; and

      ii. All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible.

5. Category IV wetlands. Alterations and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives.

F. Wetland buffers

1. Buffer Requirements. The standard buffer widths have been established in accordance with the most current, accurate, and complete scientific and technical information available. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington. Additional buffer widths are added to the standard buffer widths. The buffers widths shall be as follows:

Wetland Category	Standard Buffer Width	Additional buffer width if wetland scores		
		21-25 habitat points	26-29 habitat points	30-36 habitat points
Category I - based on total score	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Category I - Forested	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Category II - based on score	75 feet	Add 30 feet	Add 90 feet	Add 150 feet
Category III (all)	60 feet	Add 45 feet	Add 105 feet	NA
Category IV (all)	40 feet	NA	NA	NA

2. The use of the standard buffer widths requires the implementation of the following measures, where applicable, to minimize the impacts of the adjacent land uses:

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish and additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Minimize use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Disruption of corridors or	• Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

Disturbance	Required Measures to Minimize Impacts
connections	

3. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided. Where a buffer planting plan is proposed, it shall include provisions for monitoring and maintenance to ensure success.

4. Measurement of wetland buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

5. Reduction of wetland buffer widths

    a. The Shoreline Administrator may allow the standard wetland buffer width to be reduced in accordance with an approved critical area report and the most current, accurate, and complete scientific and technical information available on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values based on site-specific characteristics.

    b. Buffer widths may be reduced in the case of construction of a new single-family residence where the new structure footprint mimics that of the previous structure.

    c. This determination shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:

        i. The critical area report provides a sound rationale for a reduced buffer based on the most current, accurate, and complete scientific and technical information available.

        ii. The existing buffer area is well-vegetated with native species and has less than ten percent (10%) slopes.

        iii. No direct or indirect, short-term or long-term, adverse impacts to wetlands will result from the proposed activity.

6. Wetland buffer width averaging. The Shoreline Administrator may allow averaging of buffer widths where a qualified wetlands professional demonstrates that:

    a. It will not reduce wetland functions or values;

b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

d. The buffer width is not reduced to less than twenty five percent (25%) of the standard width or fifty (50) feet, whichever is greater, except for buffers between Category IV wetlands and low or moderate intensity land uses, in which standard buffers of 40 feet apply.

G. Performance standards – Mitigation requirements

1. Mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Mitigation plans shall be consistent with "Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans" (Version 1, Publication #06-06-011b, March 2006 or as revised).

2. Wetland mitigation actions shall not result in a net loss of wetland area except when the lost wetland area provides minimal functions and the mitigation action(s) results in a net gain in wetland functions as determined by a site-specific function assessment.

3. Mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement, and shall provide similar wetland functions as those lost except when the lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal watershed assessment plan or protocol.

4. Mitigation actions that require compensation by replacing, enhancing, or substitution, shall occur in the following order of preference:

a. Restoring wetlands on upland sites that were formerly wetlands.

b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.

c. Enhancing significantly degraded wetlands.

d. Preserving high-quality wetlands that are under imminent threat.

5. Mitigation sites shall be selected using "Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)" (Publication #09-06-032, December 2009).

6. Except where determined by the Shoreline Administrator due to weather or project conditions, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

7. The Shoreline Administrator may authorize a one-time temporary delay, up to one-hundred-twenty (120) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the Town, and include a financial guarantee.

8. Mitigation ratios

   a. Wetland buffers for all categories shall be replaced on a 1-to-1 ratio. The following ratios shall apply to creation, rehabilitation, enhancement, or preservation of wetlands that is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases.

Category and Type of Wetland	**Creation or Re-establishment**	**Rehabilitation**	**Enhancement**	**Preservation**
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

   b. Decreased replacement ratio. The Shoreline Administrator may decrease these ratios under the following circumstances:

      i. Documentation by a qualified wetlands professional demonstrates that the proposed mitigation actions have a very high likelihood of success;

ii. Documentation by a qualified wetlands professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or

iii. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

9. Wetlands enhancement as mitigation

a. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

b. At a minimum, enhancement acreage shall be as listed in Subsection 8.a. The enhancement proposal shall not result in the reduction of other wetland functions currently being provided in the wetland.

3. Fish and Wildlife Habitat Conservation Areas

A. Designation of fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation areas include:

1. The documented presence of species proposed or listed by the federal government or state of Washington as endangered, threatened, or sensitive.

2. State priority habitats and areas associated with state priority species.

3. Heron rookeries or raptor nesting trees.

4. Category I and II wetlands as defined in these critical areas regulations.

5. Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-030.

6. Type S Waters or "Shorelines of the State," which include Lake Washington shorelines, are regulated under the Town's Shoreline Master Program. All Waters of the State in shoreline jurisdiction that are not Type S Waters are regulated under this appendix of the Shoreline Master Program.

7. Areas of native vegetation and/or stands of significant trees as designated by a qualified professional that provide a corridor between any of the critical fish and wildlife habitat areas listed in this section.

8. Land essential for preserving connections between habitat blocks and open spaces.

B. Mapping of fish and wildlife habitat conservation areas. The following maps, which may be continuously updated, may be used as a guide for locating habitat conservation areas:

1. Washington Department of Fish and Wildlife Priority Habitat and Species maps;

2. Washington Department of Natural Resources, Official Water Type Reference maps;

3. Washington State Department of Natural Resources Natural Heritage Program mapping data;

4. Anadromous and resident salmonid distribution maps;

5. Habitat Limiting Factors reports published by the Washington Conservation Commission; and

6. Washington State Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps.

C. Critical area report – Additional requirements for habitat conservation areas. In addition to the general critical area report requirements of Section 1.G and 1.H, a critical area report for a habitat conservation area shall contain an assessment of habitats including the following site- and proposal-related information at a minimum:

1. Detailed description of vegetation on and adjacent to the project area.

2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species.

3. A discussion of any federal, state, or local special management recommendations, including Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area.

4. A detailed discussion of the potential impacts on habitat by the project, including potential impacts to water quality.

5. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

6. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

D. Buffers.

1. The establishment of buffer areas for activities in, or adjacent to, habitat conservation areas when needed to protect habitat conservation areas shall be required. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the state Department of Fish and Wildlife.

2. Measurement of stream buffers. All buffers shall be measured from the ordinary high water mark of the stream as surveyed in the field. The width of the stream buffer shall be determined according to the steam category. The buffer for a stream created, restored, or enhanced as compensation for approved stream alterations shall be the same as the buffer required for the category of the created, restored, or enhanced stream.

Table 1. Stream Buffer Widths

Stream Type	Standard Buffer Width
Type S, or shorelines of the state	Setback requirements provided in Chapter 6 of the SMP
Type F, or other salmonid-bearing streams	50 feet
Type Np, or other, perennial, non-salmonid bearing streams	40 feet
Type Ns, or other intermittent, non-salmonid bearing streams	30 feet

3. Seasonal restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

4. Reduction of stream buffer widths

a. The Shoreline Administrator may allow the standard stream buffer width to be reduced in accordance with an approved critical area report and the most current, accurate, and complete scientific and technical information available on a case-by-case basis when it is determined that a smaller

buffer area is adequate to protect the stream functions and values based on site-specific characteristics.

b. Buffer widths may be reduced in the case of construction of a new single-family residence where the new structure footprint mimics that of the previous structure, if the applicant can demonstrate that no other location is available on the site that would have fewer adverse environmental impacts.

c. The determination of reduced buffer width shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:

i. The critical area report provides a sound rationale for a reduced buffer based on the most current, accurate, and complete scientific and technical information available;

ii. The existing buffer area is well-vegetated with native species; and

iii. No direct or indirect, short-term or long-term, adverse impacts to streams will result from the proposed activity including, but not limited to, downstream sedimentation or flooding.

5. Stream buffer width averaging. The Shoreline Administrator may allow modification of the standard stream buffer width in accordance with an approved critical area report and the most current, accurate, and complete scientific and technical information available on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified professional demonstrates that:

a. It will not reduce stream functions or values;

b. The stream would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

E. Performance standards – General requirements

1. All regulations for fish and wildlife habitat conservation areas are in addition to regulations that govern these sensitive areas in other portions of these critical areas regulations. Whenever a conflict occurs between these regulations, the one that provides the most protection for the sensitive area shall govern.

2. Alterations shall not degrade the functions and values of habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with these critical areas regulations. A habitat conservation

area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All unavoidable impacts shall be fully mitigated.

3. Non-indigenous species shall not be introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

4. Mitigation shall result in contiguous corridors. Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

5. Approvals of activities may be conditioned. The Shoreline Administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

    a. Establishment of buffer zones.

    b. Preservation of critically important vegetation.

    c. Limitation of access to the habitat area, including fencing to deter unauthorized access.

    d. Seasonal restriction of construction activities.

    e. Establishment of a duration and timetable for periodic review of mitigation activities.

    f. Requirement of a performance bond or other security, when necessary, to ensure completion and success of proposed mitigation.

6. Bank stabilization measures

    a. Bank stabilization on Lake Washington shall be subject to the regulations of Section 6.10, Shoreline Stabilization of this SMP. The following regulations apply only to bank stabilization on non-shoreline streams.

    b. New bank stabilization measures shall not be allowed unless no other feasible alternative exists to protect buildings and infrastructure.

    c. New, replacement, or substantially improved, bank stabilization measures may be permitted in accordance with an approved critical area report that demonstrates the following:

        i. Natural stream processes will be maintained;

ii. The bank stabilization measures will not degrade fish or wildlife habitat conservation areas or associated wetlands; and

iii. All unavoidable impacts will be mitigated.

8. Roads, trails, bridges, and rights-of-way. Construction of trails, roadways, and road bridging may be permitted in accordance with an approved critical area report subject to the following standards and regulations in Section 6.11 Transportation Facilities of this SMP:

a. There is no other feasible alternative route with less impact on the environment;

b. The crossing minimizes interruption of downstream movement of wood and gravel;

c. Trails shall be located on the outer edge of the stream buffer, except for limited viewing platforms and crossings;

d. Crossings, where necessary, shall only occur as near to perpendicular with the waterbody as possible;

e. Mitigation for impacts is provided pursuant to a mitigation plan of an approved critical area report;

f. Road bridges are designed according to the most current versions of the Department of Fish and Wildlife Fish Passage Design at Road Culverts, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossings;

g. Roads and bridges shall be designed to not create fish passage blockages and to not block transport of wood, water, and sediment.

h. Trails and associated viewing platforms shall not be made of continuous impervious materials.

9. Utility Facilities. New utility lines and facilities may be permitted to cross habitat conservation areas in accordance with an approved critical area report if they comply with the following standards and regulations in Section 6.12 Utilities

a. Fish and wildlife habitat areas shall be avoided to the maximum extent possible;

b. Installation shall be accomplished by boring beneath the scour depth and hyporheic zone of the waterbody and any channel migration zone, where feasible;

c. The utilities shall cross at an angle greater than sixty (60) degrees to the centerline of the channel in streams or perpendicular to the channel centerline whenever boring under the channel is not feasible;

d. Crossings shall be contained within the footprint of an existing road or utility crossing where possible;

e. The utility route shall avoid paralleling the stream or following a down-valley course near the channel; and

f. The utility installation shall not increase or decrease the natural rate of channel migration.

g. Mitigation shall be provided for all unavoidable impacts.

10. Instream structures.

a. Instream structures and structures within the stream buffer, such as, but not limited to, high flow bypasses, sediment ponds, instream ponds, retention and detention facilities, and dams, shall not be allowed.

b. Instream structures and structures within the stream buffer to improve water quality and fish habitat shall be allowed in accordance with an approved critical area report.

11. Stormwater conveyance facilities. Conveyance structures may be permitted in accordance with an approved critical area report subject to the following standards:

a. No other feasible alternatives with less impact exist;

b. Mitigation for impacts is provided and mitigation sequencing is followed; and

c. Vegetation shall be maintained and, if necessary, added adjacent to all open channels and ponds in order to retard erosion, filter out sediments, and shade the water.

F. Performance standards – Specific habitats

1. Endangered, threatened, and sensitive species

a. No development shall be allowed within a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, with the exception of aquatic species.

b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species,

with the exception of aquatic species, have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the Town. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Department of Fish and Wildlife and the appropriate federal agency.

c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within eight hundred (800) feet, or within a quarter mile (2,640 feet) and in a shoreline foraging area. The Town shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the appropriate state or federal agency.

2. Anadromous fish

a. All activities, uses, and alterations proposed to be located in waterbodies other than Lake Washington used by anadromous fish or in areas that affect such waterbodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

i. Activities shall be timed to occur only during the allowable work window as designated by the Department of Fish and Wildlife for the applicable species;

ii. An alternative alignment or location for the activity is not feasible;

iii. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas; and

iv. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

b. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

c. Fills, when authorized by the Hunts Point Shoreline Master Program, shall not adversely impact anadromous fish or their habitat or shall mitigate any

unavoidable impacts, and shall only be allowed for a water-dependent use and when no feasible alternative exists.